

Message Text

PAGE 01 STATE 055104
ORIGIN OPIC-06

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NEA/PAB:DARCHARD

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TO AMEMBASSY DACCA IMMEDIATE

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C O R R E C T E D COPY (LINE 1 OF PARA E OMITTED ORIG. TRANS)

E.O. 11652: N/A

TAGS: EINV

SUBJECT: BELBAGCO
REF: STATE 030903

1. PURSUANT TO REFTEL PAR. 7 OPIC REQUESTS THAT THE EM-
BASSY DELIVER TO THE APPROPRIATE BDG OFFICIALS THE FOLLOW-
ING DRAFT SETTLEMENT AGREEMENT IF YOU PERCIEVE NO
OBJECTIONS

----- DRAFT

-----AGREEMENT OF SETTLEMENT

-----AGREEMENT OF SETTLEMENT, MADE IN DACCA, BANAGLADESH,
ON THIS --- DAY OF ----, 1977, BY AND BETWEEN THE GOVERN-
MENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH (THE "GOVERN-
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PAGE 02 STATE 055104

MENT") REPRESENTED BY -----,OVERSEAS PRIVATE INVEST-
MENT CORPORATION, AN AGENCY OF THE UNITED STATES GOVERN-
MENT ("OPIC"), REPRESENTED BY ----- AND BELBAGCO, INC., A
DELAWARE CORPORATION ("BELBAGCO"), REPRESENTED BY -----.

-----WITNESSETH:

---WHEREAS, ON OR ABOUT MARCH 4, 1959 BELBAGCO CAUSED TO BE
ORGANIZAED UNDER THE LAWS OF PAKISTAN, PARKISTAN FABRIC

COMPANY LTD., THE NAME OF WHICH WAS SUBSEQUENTLY

CHANGED TO BANGLADESH FABRIC COMPANY LTD. ("BAN FAB") AND MADE A CONTRIBUTION (THE "INVESTMENT") TO BAN FAB IN RETURN FOR ONE HUNDRED PERCENT (100 PERCENT) OF ITS ORDINARY SHARES, EXCEPT FOR TWO SHARES OF STOCK ISSUED TO ORGANIZERS OF BAN FAB AND HELD IN TRUST FOR THE BENEFIT OF BELGACO; AND

---WHEREAS, BELBAGCO AND OPIC'S PREDECESSOR IN INTEREST, AGENCY FOR INTERNATIONAL DEVELOPMENT ("AID"), ENTERED INTO CONTRACT OF GUARANTY NO. 1142, DATED NOVEMBER 19, 1962, AND CONTRACT OF GUARANTY NO. 6080, DATED JULY 16, 1968, (THE "CONTRACTS OF GUARANTY"), UNDER WHICH AID INSURED THE INVESTMENT FOR LOSSES DUE TO EXPROPRIATION, WAR, REVOLUTION AND INSURRECTION; AND

---WHEREAS, BY VIRTUE OF THE LAWS OF THE UNITED STATES OF AMERICA, OPIC BECAME THE LEGAL SUCCESSOR IN ALL MATTERS PERTAINING TO THE CONTRACTS OF GUARANTY TO AID; AND

---WHEREAS, ON MARCH 26, 1972, THE GOVERNMENT PROMULGATED PRESIDENTIAL ORDER NO. 27 OF 1972, THE BANGLADESH INDUSTRIAL ENTERPRISES (NATIONALIZATION) ORDER, 1972 ("PRESIDENTIAL ORDER NO. 27"), VESTED THE SHARES OF INDUSTRIAL ENTERPRISES LISTED IN THE SCHEDULES TO SUCH ORDER IN THE GOVERNMENT, INCLUDING THE SHARES OF BAN FAB, AND PLACED SUCH INDUSTRIAL LIMITED OFFICIAL USE
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PAGE 03 STATE 055104

ENTERPRISES, INCLUDING BAN FAB, UNDER THE BANGLADESH JUTE MILLS CORPORATION; AND

---WHEREAS, BELBAGCO FILED WITH OPIC APPLICATIONS FOR COMPENSATION (THE "CLAIMS") UNDER THE CONTRACTS OF GUARANTY WITH RESPECT TO ITS INVESTMENT IN BAN FAB; AND

---WHEREAS, BY EXCHANGES OF NOTES BETWEEN THE GOVERNMENT AND OPIC ON JANUARY 17 AND 20, 1975, THE GOVERNMENT AGREED TO RECOGNIZE OPIC'S RIGHTS OF SUBROGATION IN THE EVENT OF A PAYMENT OF BELBAGCO'S CLAIMS; AND

---WHEREAS, ON JUNE 28, 1976, OPIC SETTLED THE CLAIMS OF BELBAGCO UNDER THE CONTRACTS OF GUARANTY AND BECAME SUBROGATED THERETO; AND

---WHEREAS, ON OCTOBER 26, 1976, OPIC AND BELBAGCO FILED A JOINT APPLICATION TO CLAIM COMPENSATION (THE "CLAIM TO COMPENSATION") UNDER PRESIDENT'S ORDERS 27 AND 28, NO. 00690, WITH RESPECT TO BAN FAB; AND

---WHEREAS, PURSUANT TO THE PROVISIONS OF PRESIDENTIAL ORDER NO. 27, ALL OF THE 65,161 ISSUED AND OUTSTANDING SHARES OF BAN FAB, 65,159 OF WHICH ARE THE SUBJECT OF THE

CLAIM TO COMPENSATION REPRESENTED BY CERTIFICATE NUMBERS

3 THROUGH 9 (THE "SHARES"), HAVE VESTED IN THE GOVERNMENT;
AND

---WHEREAS, ON NOVEMBER 10, 1976, THE GOVERNMENT AGREED IN
PRINCIPLE TO PAY COMPENSATION FOR BAN FAB; AND

---WHEREAS, THE PARTIES HERETO DESIRE TO PROVIDE FOR A
COMPLETE SETTLEMENT OF THEIR RESPECTIVE RIGHTS
AND/OR OBLIGATIONS WITH RESPECT TO THE CLAIM TO COMPENSA-
TION.

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PAGE 04 STATE 055104

---NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND
OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO
AGREE AS FOLLOWS:

----- (1) COMPENSATION BY THE GOVERNMENT. OPIC AND BEL-
BAGCO JOINTLY AGREE TO ACCEPT AS COMPENSATION FOR THE
SHARES OF BAN FAB THE SUM OF DOLLARS ----- IN THE
FORM OF LEGAL TENDER OF THE UNITED STATES OF AMERICA,
FREE AND CLEAR OF ALL KINDS OF TAXES AND LEVIES OF ANY
NATURE OF THE GOVERNMENT, WHICH THE GOVERNMENT SHALL PAY
ON THE DATES AND IN ACCORDANCE WITH TERMS AND CONDITIONS
INDICATED BELOW:

----- (DATES, TERMS AND CONDITIONS TO BE INSERTED)

----- (2) SETTLEMENT OF CLAIM TO COMPENSATION. OPIC AND
BELBAGCO ON THE ONE HAND AND THE GOVERNMENT ON THE OTHER
HAND AGREE TO A COMPLETE SETTLEMENT OF THE CLAIM TO
COMPENSATION AND THEIR RESPECTIVE RIGHTS AND/OR OBLIGA-
TIONS WITH RESPECT THERETO ON THE TERMS AND CONDITIONS
SET FORTH IN THIS AGREEMENT OF SETTLEMENT, AND, IN CONNECT-
ION THEREWITH, DO HEREBY RESPECTIVELY, AND FOR THEIR
RESPECTIVE PREDECESSORS AND SUCCESSORS AND ASSIGNS, FOR-
EVER RELEASE, REMISE AND DISCHARGE ONE ANOTHER FROM ALL
ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES AND ANY
OTHER CLAIMS AND DEMANDS WHATSOEVER IN LAW, IN ADMIRALTY,
OR IN EQUITY ARISING OUT OF, RELATING TO, FOR, UPON, OR
BY REASON OF THE CLAIM TO COMPENSATION, EXCEPT FOR THE
RIGHTS AND/OR OBLIGATIONS AND THE REPRESENTATIONS, WARRANT-
TIES AND COVENANTS OF THE PARTIES CONTAINED HEREIN.

----- (3) REPRESENTATIONS, WARRANTIES AND COVENANTS OF
OPIC AND BELBAGCO. IN ORDER TO INDUCE THE GOVERNMENT TO
ENTER INTO THIS AGREEMENT OF SETTLEMENT, OPIC AND BELBAGCO
JOINTLY REPRESENT, WARRANT AND COVENANT AS FOLLOWS:

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PAGE 05 STATE 055104

------(A) AS OF MARCH 26, 1972, THE SHARES WERE OWNED BY BELBAGCO FREE AND CLEAR OF ANY BINDING AND EFFECTIVE ASSIGNMENT, TRANSFER, PLEDGE, ENCUMBRANCE OR OTHER DISPOSITION AND SINCE SUCH DATE BELBAGCO HAS NOT ASSIGNED,

TRANSFERRED, PLEDGED, ENCUMBRANCED OR OTHERWISE DISPOSED OF THE SHARES OR ANY OF ITS RIGHT, TITLE OR INTEREST THEREIN OR IN BAN FAB, EXCEPT TO TRANSFER BENEFICIAL OWNERSHIP OF THE SHARES AND IN BAN FAB TO OPIC, AS SUBROGEE, PURSUANT TO THE SETTLEMENT BY OPIC OF THE CLAIMS OF BELBAGCO UNDER THE CONTRACTS OF GUARANTY;

------(B) THE FINANCIAL STATEMENTS OF BAN FAB, PREVIOUSLY FURNISHED TO THE GOVERNMENT BY OPIC, CONSTITUTE TRUE AND CORRECT COPIES OF THE BALANCE SHEETS OF BAN FAB AS OF DECEMBER 15, 1971, AND JUNE 30, 1971, AND THE INCOME STATEMENT FOR THE PERIOD JULY 1, 1970, THROUGH JUNE 30, 1971, AS PREPARED BY BAN FAB AND/OR ITS ACCOUNTANTS TO THE BEST OF THE KNOWLEDGE AND BELIEF OF OPIC AND BELBAGCO SUCH FINANCIAL STATEMENTS WERE PREPARED IN ACCORDANCE WITH THE LAWS GOVERNING THE TERRITORY OF BANGLADESH AS OF THE DATE OF SUCH STATEMENTS.

------(C) BOTH OPIC AND BELBAGCO HAVE THE AUTHORITY UNDER LAW, AND THE UNDERSIGNED REPRESENTATIVES OF OPIC AND BELBAGCO HAS BEEN DULY AUTHORIZED BY ALL NECESSARY CORPORATE ACTION, ON BEHALF OF OPIC AND BELBAGCO, TO ENTER INTO AND PERFORM THIS AGREEMENT OF SETTLEMENT AND ALL OBLIGATIONS HEREOF AND TRANSACTIONS CONTEMPLATED HEREBY;

------(D) TO THE BEST OF THE KNOWLEDGE AND BELIEF OF OPIC AND BELBAGCO, NO INFORMATION OR REPRESENTATION FURNISHED OR MADE BY OPIC AND BELBAGCO TO THE GOVERNMENT IN CONNECTION WITH THE CLAIM TO COMPENSATION CONTAINS ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMITTS TO STATE A FACT WITHOUT WHICH THE STATEMENTS CONTAINED THEREIN WOULD
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PAGE 06 STATE 055104

BE MISLEADING.

------(E) NEITHER OPIC NOR BELBAGCO HAVE MADE NOR WILL THEY MAKE ANY CLAIM AGAINST THE GOVERNMENT OF PAKISTAN WITH RESPECT TO THE SHARES OR BAN FAB; NOR HAVE EITHER REQUESTED OR AUTHORIZED NOR WILL THEY REQUEST OR AUTHORIZE THE GOVERNMENT OF PAKISTAN TO ESPOUSE OR OTHERWISE PURSUE ANY SUCH CLAIM ON BEHALF OF EITHER BELBAGCO, OPIC OR THE GOVERNMENT OF PAKISTAN ITSELF.

----- (F) BOTH OPIC AND BELBAGCO WILL TAKE ALL ACTIONS WITHIN THEIR POWER AND EXECUTE SUCH DOCUMENTS AS MAY BE REASONABLY REQUESTED BY THE GOVERNMENT TO FULFILL THEIR OBLIGATIONS UNDER THE AGREEMENT OF SETTLEMENT.

----- (4) INDEMNIFICATION. OPIC AND BELBAGCO HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE GOVERNMENT FROM AND AGAINST ANY AND ALL LOSS, LIABILITY OR DAMAGE ARISING OUT OF OR CAUSED BY THE BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT MADE BY OPIC OR BELBAGCO IN THIS AGREEMENT OF SETTLEMENT.

----- (5) REPRESENTATIONS AND WARRANTIES OF THE GOVERNMENT. IN ORDER TO INDUCE OPIC AND BELBAGCO TO ENTER INTO THIS AGREEMENT OF SETTLEMENT, THE GOVERNMENT REPRESENTS AND WARRANTS TO OPIC AND BELBAGCO THAT IT HAS THE AUTHORITY UNDER LAW AND ITS REPRESENTATIVES HAVE BEEN DULY AUTHORIZED BY ALL NECESSARY ACTION TO ENTER INTO AND PERFORM THIS AGREEMENT OF SETTLEMENT AND ALL OBLIGATIONS HEREOF AND TRANSACTIONS CONTEMPLATED HEREBY.

----- (6) SURVIVAL OF REPRESENTATIONS AND WARRANTIES. THE COVENANTS, REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT OF SETTLEMENT SHALL SURVIVE THE EXECUTION AND DELIVERY OF THE OTHER DOCUMENTS REFERRED TO HEREIN.

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PAGE 07 STATE 055104

----- (7) NOTICES. ANY NOTICE, REQUEST, APPLICATION, OR OTHER COMMUNICATION GIVEN OR MADE UNDER THIS AGREEMENT SHALL BE IN WRITING, MAY BE DELIVERED BY HAND, MAIL, TELEGRAM, CABLE OR RADIOGRAM, AND SHALL BE DEEMED TO HAVE BEEN DULY GIVEN OR MADE WHEN IT SHALL BE RECEIVED BY THE PARTY TO WHICH IT WAS SENT AT ITS FOLLOWING ADDRESS (OR AT SUCH OTHER ADDRESS AS MAY HEREAFTER BE FURNISHED BY ONE PARTY TO THE OTHER IN WRITING):

----- TO THE GOVERNMENT:

----- TO BELBAGCO:

----- M.F. MITCHEL
----- PRESIDENT
----- BELTON BAGGING COMPANY
----- P. O. BOX 127
----- BELTON, SOUTH CAROLINA 29627

----- TO OPIC:

----- OVERSEAS PRIVATE INVESTMENT CORPORATION

-----WASHINGTON, D. C. 20527

-----ATTENTION: GENERAL COUNSEL

MISCELLANEOUS. THIS AGREEMENT OF SETTLEMENT EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDINGS BETWEEN THE PARTIES AND SUPERSEDES ANY PRIOR AGREEMENTS, REPRESENTATIONS OR UNDERSTANDING WITH RESPECT TO THE SUBJECT MATTER HEREOF. THE HEADINGS USED HEREIN ARE FOR CONVENIENCE ONLY AND ARE NOT TO BE UTILIZED IN INTERPRETING THIS AGREEMENT OF SETTLEMENT. NO PROVISION OF THIS AGREEMENT OF SETTLEMENT MAY BE MODIFIED, SUPPLEMENTED OR WAIVED EXCEPT BY WRITTEN AGREEMENT SIGNED BY ALL PARTIES HERETO.

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PAGE 08 STATE 055104

-----IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED AND DELIVERED THIS AGREEMENT OF SETTLEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

-----GOVERNMENT OF THE PEOPLE'S

-----REPUBLIC OF BANGLADESH

-----BY-----

-----OVERSEAS PRIVATE INVESTMENT

-----CORPORATION

-----BY-----

-----BELBAGCO, INC.

-----BY-----

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